IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

MONDAY, THE 14TH AUGUST 2006 / 23RD SRAVANA 1928

WP(C).No. 4238 of 2005(D)

PETITIONER:

LEELAMMA JOSEPH, HEADMISTRESS, GLPS
KULASEKHARAPURAM, ARUNOOTTIMANGALAM.

BY ADV. SRI.C.G.SUNIL
SRI.SAJI MATHEW
SRI.DENU JOSEPH

RESPONDENTS:

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1. STATE OF KERALA REPRESENTED BY
THE SECRETARY GENERAL EDUCATION, TRIVANDRUM.

2. THE DEPUTY DIRECTOR OF EDUCATION,
KOTTAYAM.

BY GOVERNMENT PLEADER SMT.RENU.D.P.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/08/2006, ALONG WITH WPC NO. 5024 OF 2006, WPC NO. 4243 OF 2005, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

Ext.P1: Transfer order issued by the 2nd respondent dated 2.11.1993.

Ext.P2: Certificate issued by Public Service Commission dated 24.4.2004.

Ext.P3: Show cause notice issued by the 2nd respondent dated 15.1.2005.

Ext.P4: Reply submitted by the petitioner dated 24.1.2005.

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P.A. To Judge

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A.K.BASHEER, J.

W.P.(C)Nos.4238, 4243 OF 2005
& 5024 OF 2006

Dated this the 14th day of August, 2006

JUDGMENT

Since a common issue arises in these three writ petitions, they are being disposed of through this common judgment.

2. While the petitioners were working as Primary School Teachers in Government schools in the districts of Kasargod and Malappuram respectively, they had sought for inter-district transfer. By a common order dated November 2, 1993 petitioners were transferred to different schools in Kottayam District as requested by them. A copy of the above order is on record as Ext.P1.

3. Petitioners were enlisted as Sl.Nos.8 to 10 in Ext.P1 order issued by the Deputy Director of Education, Kottayam. Sl.Nos.1 to 7 were also given inter district transfer to Kottayam from other districts as requested by them by the same order. It was specifically mentioned in Ext.P1 order that all the teachers except Sl.Nos.8 to 10 (petitioners) would furnish a declaration to the effect that he/she was willing to be treated as junior to the junior

most primary teachers in Kottayam district as per the terms and conditions laid down in the Government Orders mentioned in the order. Petitioners were exempted from giving such a declaration since they were relatives of Jawans. Obviously, therefore they had not given any declaration as in the case of Serial Nos.1 to 7 and had joined duty in the respective schools in Kottayam district in November 1993 itself. All of them are continuing in Kottayam district even now.

4. While continuing in Kottayam, petitioners in Writ petition Nos.4238 and 4243 of 2005 had been promoted to the post of Headmistress in June and August 2004 respectively. In January 2005, petitioners in these two writ petitions were served with notice issued by the Deputy Director of Education, Kottayam informing them that it had been decided to revert them as primary teachers, since it was found that the seniority assigned to them in Kottayam District after the inter district transfer was irregular and incorrect. Therefore, petitioners were directed to show cause why they should not be reverted as primary teachers. Petitioners had preferred the above two writ petitions after

submitting Ext.P4 objection to the show cause notice. By virtue of the interim orders issued in the two writ petitions they have been continuing in the post of Headmistress ever since.

5. In writ petition no.5024/06, the petitioner had sought for promotion to the post of Headmistress in her representation dated December 23, 2005. In response to the said representation, she was informed by the Deputy Director of Education that she was not entitled to get promotion since by inter district transfer, she had lost her seniority in the district and unless and until final verdict was rendered by this court in the above two writ petitions, the request made by the petitioner for promotion cannot be considered. A copy of the above communication dated January 12, 2006 is on record as Ext.P2.

6. It is contended by the respondents that inter-district transfer of Government employees was infact governed by Ext.R2 (1) order of the Government dated December 2, 1991 at the relevant point of time. It was stipulated in the said order that any inter district transfer except the one of candidates advised to headquarters vacancies to the district of his choice, will entail

loss of seniority. Respondents contend that the petitioners had lost their seniority because of the inter district transfer to Kottayam. They had to be placed as junior to the junior most in the said district.

7. But it is pertinent to note that Clause 4(i) in Ext.R2(a) stipulates that “inter district transfer of candidates belonging to the category of near relatives/dependents of serving soldiers/soldiers killed in action or died while duty in field/forward areas, would be entitled to apply for inter district transfer even before completing 5 years of service in the district concerned”. It is not in dispute that petitioners were given inter district transfer, since they belonged to the category of near relatives/dependents of soldiers. The above fact was specifically mentioned in Ext.P1 order while granting them the benefit of inter district transfer in the year 1993. It was also mentioned in Ext.P1 order that it was not necessary for the petitioners to give declaration to the effect that they were prepared to be treated as junior to the junior most in Kottayam district. In other words, petitioners were assured that they would not lose their seniority

or that they would be treated as junior to the junior most in Kottayam district. They had continued in service in Kottayam for more than 12 years on the strength of the said assurance and under the bonafide belief that they had not lost their seniority in service.

8. It is true that petitioners had joined service in the year 1987. At the time of their inter district transfer, they had completed about six years' service. But Ext.P1 order clearly shows that they were given inter district transfer since they belonged to the category of near relatives/dependents of soldiers. Petitioners in Writ Petition No.4238 and 4243 of 2005, were duly promoted to the post of Headmistress on the basis of the rank position assigned to them in the seniority list after the transfer. They had got promotion in the year 2004 and were continuing in the promoted post ever since. Nobody had objected to their seniority or subsequent promotion. As far as the petitioner in writ petition No.5024 of 2006 is concerned she was anticipating her promotion. It was at that stage that the department had decided to upset their seniority position.

9. Having regard to the peculiar facts and circumstances, I am of the view that the respondents are not justified in reverting the petitioners in writ petition No.4238 and 4243 of 2005.

10. In the case of the petitioner in writ petition no.5024 of 2006 also, respondents will not be justified to upset or modify her long standing seniority position in Kottayam district as Primary Teacher after the inter district transfer.

11. Therefore, Ext.P3 show cause notice in writ petition no.4238 and 4243 of 2005 are quashed. Therefore, the respondents in this case are directed to reckon the service of the petitioner with effect from her date of entry of service viz. July 8, 1987 for the purpose of her seniority in Kottayam district and promote her as Headmistress as and when her turn arrives.

Writ petitions are allowed as above.

A.K.BASHEER, JUDGE

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